

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Ginger Melillo, et al., NO. C 09-05823 JW

**Plaintiffs,** **SCHEDULING ORDER**

V.

Erica L. Brachfeld, et al.,  
Defendant

NO. C 09 05825 JW

## SCHEDULING ORDER

Erica L. Brachfeld, et al.,

This case is scheduled for a Case Management Conference on May 24, 2010. Pursuant to the Federal Rules of Civil Procedure and Local Rules of this Court, the parties conferred and duly submitted a Joint Case Management Statement and Proposed Order. (See Docket Item No. 21.) Based on their joint submission, it appears that a schedule for the case can be set without the necessity of an appearance at this time. Accordingly, the Case Management Conference is VACATED and the parties are ordered to comply with the following schedule:<sup>1</sup>

## CASE SCHEDULE

<b>Close of All Discovery (¶ 9)</b>	<b>November 22, 2010</b>
<b>Last Date for Hearing Dispositive Motions (¶ 10) (<i>≈60 days after the Close of All Discovery</i>)</b>	<b>January 24, 2011</b>
<b>Preliminary Pretrial Conference at 11 a.m. (¶ 12) (<i>≈30 days before the Close of All Discovery</i>)</b>	<b>October 25, 2010</b>
<b>Preliminary Pretrial Conference Statements (¶ 11) (<i>Due 10 days before conference</i>)</b>	<b>October 15, 2010</b>

<sup>1</sup> Accordingly, the parties' Motions to Appear by Telephone are DENIED as moot. (Docket Item Nos. 20, 22.)

1       None of the dates set in this Order may be changed without an order of the Court made after  
2 a motion is filed pursuant to the Civil Local Rules of Court.

3                   **Standing Order to Lodge Printed Copy of "ECF" Papers**

4       1.       In all cases, including cases covered by the Electronic Case Filing System of  
5 the Court "ECF," when filing papers in connection with any motion or any pretrial conference, in  
6 addition to filing the paper electronically, the filing parties shall lodge with the Clerk's Office a  
7 printed copy of the papers, in an envelop clearly marked "Chamber's Copy – Lodged for the  
8 Chambers of Judge James Ware." The "Chamber's Copy" envelop must state the case name and case  
9 number and be delivered on or before the close of the next court day following the day the papers  
10 are filed electronically. See Standing Order Regarding Case Management in Civil Cases.

11                   **Compliance with Discovery Plan and Reference to Magistrate Judge**

12       2.       The Court adopts the Discovery Plan proposed by the parties in their Joint  
13 Case Management Statement. The parties are ordered to comply with the discovery plan. Any  
14 disputes with respect to the implementation of the discovery plan and all disclosure or discovery  
15 disputes are referred to the assigned Magistrate Judge. In addition, any disputes pertaining to  
16 service or joinder of parties or claims are referred to the assigned Magistrate Judge.

17                   **Document Management During Pretrial Discovery and Electronic Evidence Presentation**

18       3.       This Court has available a digital and video electronic evidence presentation  
19 system. Before commencement of pretrial discovery, the parties are ordered to familiarize  
20 themselves with the system, and to meet and confer about whether the case will involve voluminous  
21 documentary. If so, as the parties identify documentary material which is likely to be used as trial  
22 exhibits, the parties are ordered to electronically store these materials in a fashion which will  
23 facilitate displaying them electronically during the trial. The parties are reminded that Civil L.R. 30-  
24 2(b) requires sequential numbering of exhibits during depositions and that numbering must be  
25 maintained for those exhibits throughout the litigation. Each proposed exhibit shall be pre-marked  
26 for identification. All exhibits shall be marked with numerals. The parties shall meet and confer on  
27  
28

1 a division which will avoid duplication (e.g., Plaintiff: 1-99,000; Defendant #1: 100,000-299,999;  
 2 Defendant #2: 300,000-500,000).

3 **Disclosure of Expert Witnesses**

4 4. Any party wishing to present expert witness testimony with respect to a  
 5 claim or a defense shall lodge with the Court and serve on all other parties the name, address,  
 6 qualifications, résumé and a written report which complies with Fed. R. Civ. P. 26(a)(2)(B) **63 days**  
 7 **before close of discovery.** Expert witness disclosure must be made with respect to a person who is  
 8 either (a) specially retained or specially employed to provide expert testimony pursuant to  
 9 Fed.R.Evid. 702 or (b) a regular employee or agent or treating physician who may be called to  
 10 provide expert opinion testimony.

11 5. The parties are also required to lodge any supplemental reports to which any  
 12 expert will testify at trial in accordance with Fed. R. Civ. P. 26(a)(2)(B).

13 6. Any party objecting to the qualifications or proposed testimony of an expert  
 14 must file, serve and notice a motion to exclude the expert or any portion of the expert's testimony in  
 15 writing in accordance with Civil Local Rule 7-2, for hearing no later than **42 DAYS AFTER BOTH**  
 16 **EXPERT AND REBUTTAL EXPERT DISCLOSURES ON A MONDAY (LAW AND**  
 17 **MOTION DAY) at 9:00 a.m.** and preferably before or on the same day as the discovery cutoff  
 18 date at 9:00 a.m.

19 **Rebuttal Expert Witnesses**

20 7. If the testimony of the expert is intended solely to contradict or rebut opinion  
 21 testimony on the same subject matter identified by another party, the party proffering a rebuttal  
 22 expert shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(B), no later than **49 days**  
 23 **prior to discovery cutoff.**

24 **Limitation on Testimony by Expert Witnesses**

25 8. Unless the parties enter into a written stipulation otherwise, upon timely  
 26 objection, an expert witness shall be precluded from testifying about any actions or opinions not  
 27 disclosed prior to the expert's deposition. This is to ensure that all factual material upon which

- 1 expert opinion may be based and all tests and reports are completed prior to the expert deposition.
- 2 Unless application is made prior to the close of expert discovery, each party will be limited to
- 3 calling only one expert witness in each discipline involved in the case.

## Close of Discovery

5                   9. Pursuant to Civil L.R. 26-2, all discovery, including supplemental  
6 disclosure, depositions of fact witness and expert witnesses, must be completed on or before the  
7 deadline set forth in the Case Schedule above.

## **Last date for Hearing Dispositive Motions**

9                   10. The last day for hearing dispositive motions is set forth in the Case Schedule  
10 above. Any motions must be noticed in accordance with the Civil Local Rules of this Court.

**Preliminary Pretrial and Trial Setting Conference Statement and Proposed Order**

11. The attorneys who will try the case are ordered to confer with one another  
12 and to file and lodge with Chambers on or before the deadline set forth in the Case Schedule above a  
13 Preliminary Pretrial and Trial Setting Conference Statement and Proposed Order, stating their  
14 readiness for trial, the amount of time which the Court should allocate for trial and the calendar  
15 period for the trial.

17           12. The attorneys who will try the case are ordered to appear on the date set in  
18 the Case Schedule at 11:00 a.m. for a Preliminary Pretrial and Trial Setting Conference.

19                   13. With respect to the time allocation for trial, at the Preliminary Pretrial and  
20 Trial Setting Conference trial counsel will be asked to stipulate to a time allocation to each side for  
21 the trial of the case. Once a stipulated allocation has been entered, the parties must plan their  
22 presentations to conform to the stipulated time allocation.

24 || Dated: May 19, 2010

James Ware  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Ian D. Chowdhury ian@ianchowdhury.com  
3 Larissa G. Nefulda lNefulda@lbbslaw.com

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5 **Dated: May 19, 2010**

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7 **Richard W. Wieking, Clerk**

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By: /s/ JW Chambers

Elizabeth Garcia  
Courtroom Deputy